

## TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

#### Rule making related to rights-of-way and primary road extensions

The Department of Transportation hereby amends Chapter 150, “Improvements and Maintenance on Primary Road Extensions,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 307.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 306.4 and 306.42.

#### *Purpose and Summary*

This rule making amends subrules 150.2(1) and 150.3(1) to continue the requirement that a city shall still be responsible for providing, without cost to the Department, all necessary rights-of-way that involve dedicated streets or alleys. However, the amendments to the subrules modify the requirement that a city provide all necessary rights-of-way that involve other city-owned lands, except parklands, by stating that a city “may” (rather than “shall”) be responsible for providing them. This will enable a city to negotiate the transfer of parcels of land, instead of donating them outright to the Department.

Other amendments to Chapter 150 update two implementation sentences to add a reference to Iowa Code section 306.42, clarify terminology regarding road type, reflect the current version of an American Association of State Highway and Transportation Officials (AASHTO) publication, and correct a bureau name.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5244C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on January 13, 2021.

#### *Fiscal Impact*

The fiscal impact cannot be determined. The amendments that may incur some fiscal impact to the Department and cities are subrules 150.2(1) and 150.3(1). The level of fiscal impact will depend on three highly variable factors: the number of projects that would be likely to impact city land in any given period, the size and value of the parcels in question, and the decision of the impacted city on whether the city would choose to donate or negotiate a sale with the Department instead. The potential negative fiscal impact to the Department and positive impact to cities depends on how those three variables interact.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 17, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 150.2(1) as follows:

**150.2(1) Construction.** Except as otherwise provided, the department shall be responsible for all right-of-way and construction costs associated with the construction of ~~freeways and their~~ freeway extensions.

*a.* The city shall be responsible for providing, without cost to the department, all necessary ~~right-of-way which involves:~~

~~(1) Dedicated rights-of-way that involve dedicated streets or alleys, and.~~

~~(2) b.~~ The city may be responsible for providing, without cost to the department, all necessary rights-of-way that involve other city-owned lands, except parklands, subject to the condition that the department may reimburse the city for the functional replacement value of improved property and advanced purchases negotiated by the city for project purposes.

~~b. c.~~ Outside the access control limits, the department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction in the proportion that the street right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be responsible for the remaining portion of ~~storm sewer~~ storm-sewer costs not paid for by the department.

~~c. d.~~ The department shall be responsible for all storm-sewer related costs within the access control limits.

ITEM 2. Amend subrule 150.2(2), introductory paragraph, as follows:

**150.2(2) Maintenance.** The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, the maintenance responsibilities of freeway extensions within the corporate city limits, including corporate line roads, shall be as follows:

ITEM 3. Amend rule ~~761—~~**150.2(306)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.4, 306.42, 313.4, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6 and chapter 306A.

ITEM 4. Amend subrule 150.3(1) as follows:

**150.3(1) Construction.**

*a.* The department shall be responsible for all right-of-way and construction costs to construct nonfreeway primary ~~highways and their~~ highway extensions to the minimum design criteria as established by the department. Construction improvement costs beyond minimum design criteria shall be the responsibility of the city, as specified in the project agreement. Minimum design criteria shall be in accordance with “A Policy on Geometric Design of Highways and Streets, 2011 2018” (~~Sixth~~ Seventh Edition AASHTO Green Book).

*b.* The city shall be responsible for providing, without cost to the department, all necessary ~~right-of-way which involves:~~

~~(1) Dedicated rights-of-way that involve dedicated streets or alleys, and.~~

~~(2) c.~~ ~~Other~~ The city may be responsible for providing, without cost to the department, all necessary rights-of-way that involve other city-owned lands, except parklands, subject to the condition that the department may reimburse the city for the functional replacement value of improved property and advanced purchases negotiated by the city for project purposes.

~~e. d.~~ The city shall take all necessary legal action to discontinue and prohibit any past or present use of project ~~right-of-way~~ rights-of-way for private purposes. The city shall prevent any future encroachment or obstruction within the limits of project ~~right-of-way~~ rights-of-way.

~~d. e.~~ The department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes in the proportion that the right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be responsible for the remaining portion of ~~storm-sewer~~ storm-sewer costs not paid for by the department.

~~e. f.~~ Unless otherwise mutually agreed to and specified in the project agreement, the department shall be responsible for the cost of ~~right-of-way~~ acquiring rights-of-way and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes.

ITEM 5. Amend subrule 150.3(2), introductory paragraph, as follows:

**150.3(2) Maintenance.** The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, the maintenance responsibilities of nonfreeway primary highway extensions within the corporate city limits, including corporate line roads, shall be as follows:

ITEM 6. Amend rule ~~761—150.3(306)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.4, 306.42, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5, 314.6 and 321E.3 and chapter 306A.

ITEM 7. Amend subrule 150.5(1) as follows:

**150.5(1) Waivers.** The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the Rules Administrator, Strategic Communications and Policy Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or by email to the rules administrator's email address listed on the department's website at iowadot.gov/administrativerules.

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